

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RENITA CHALEPAH, as
PERSONAL REPRESENTATIVE of the
ESTATE OF ZACHARY NICHOLAS
BEAR HEELS for the benefit of the Heirs
and Next of Kin and as PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ZACHARY NICHOLAS
BEAR HEELS, Deceased,

Plaintiff

v.

THE CITY OF OMAHA, a
Nebraska political subdivision;
SCOTTY PAYNE, in his individual
and official capacity; RYAN
MCCLARTY, in his individual and
official capacity; JENNIFER STRUDL,
in her individual and official capacity;
MCKYLA MEAD, in her individual
and official capacity; and SGT. ERIK
FOREHEAD, in his individual and
official capacity.

Defendants.

CASE NO: 8:18cv381

**INDEX OF EVIDENCE IN
SUPPORT OF PLAINTIFF'S
BRIEF IN RESPONSE TO
MOTION TO DISMISS
WITH ATTACHED
VERIFICATION**

COMES NOW, Plaintiff Renita Chalepah, by and through counsel, Garvin Isaacs and Debbie Maddox, and submits the following attached Exhibit in support of Plaintiff's Brief in Response to Defendant's Motion to Dismiss.

INDEX

1. Omaha Police Department In-Custody Death Investigation Release, Monday, June 5, 2017.

DATED this 24th day of October, 2018.

RENITA CHALEPAH, Plaintiff

By: s/Garvin A. Isaacs
Garvin A. Isaacs, OK Bar #4559
Debbie Maddox, OK Bar #13166
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of October, 2018, I electronically filed the foregoing **PLAINTIFF'S INDEX OF EVIDENCE IN RESPONSE TO DEFENDANTS MOTION TO DISMISS** with the Clerk of the District Court using the CM/EFC system which sent notification of such filing to the following:

Michelle A. Peters, Attorneys for Defendants
Ryan J. Wiesen
Michelle.Peters@cityofomaha.org
Ryan.Wiesen@cityofomaha.org

s/ Garvin A. Isaacs

VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) ss:

Isaacs

I, Garvin A. ~~Issacs~~, of lawful age and being first duly sworn upon my oath, state:

I am one of the lawyers representing the Plaintiff in this matter and in accordance with Local Court Rule 7.1(b)(2)(B) and (C), I verify that the Omaha Police Department In-Custody Death Investigation Release dated Monday, June 5, 2017, attached to the **INDEX OF EVIDENCE IN SUPPORT OF PLAINTIFF'S BRIEF IN RESPONSE TO DEFENDANTS' MOTION TO DISMISS** was downloaded from the City of Omaha website, and found at www.cityofomaha.org/press-releases. The In-Custody Death Investigation Release was reproduced by copying the pdf document from the City of Omaha website. This Release was authored by and originally disseminated by Omaha Police Department officials and therefore satisfies the authentication requirements pursuant to and FRE 902(5) and can be formally noticed by the court pursuant to FRE 201. I further affirm this pleading is not being filed for any improper purpose.

Garvin A. Isaacs

Garvin A. Isaacs

Subscribed and sworn to before me this 24th day of October, 2018.

Shelby Leed
Notary Public

(SEAL)

My Commission Expires



1. The undersigned, a Notary Public in and for the State of Alabama, do hereby certify that the foregoing is a true and correct copy of the original document as the same appears in the records of the Alabama Department of Archives and History.

2. The undersigned, a Notary Public in and for the State of Alabama, do hereby certify that the foregoing is a true and correct copy of the original document as the same appears in the records of the Alabama Department of Archives and History.

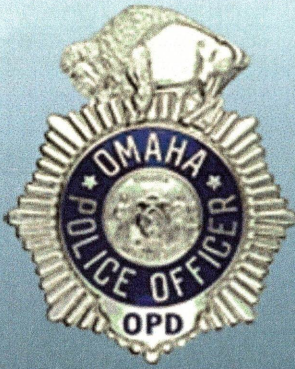
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Cheryl L. ...





OMAHA POLICE DEPARTMENT

Omaha, Nebraska

In-Custody Death Investigation Release

Monday, June 5th 2017

UPDATE: In-Custody Death Timeline

Mr. Bear-heels was traveling by bus from Murdo, South Dakota to Oklahoma City. The bus arrived at 16th & Jackson Street at 11:35 p.m. on Saturday, June 3rd. Due to his conduct and a complaint from another passenger, Mr. Bear-heels was not allowed to board the departure bus. He is seen on video leaving the bus station at 11:50 p.m. on June 3rd.

On Sunday, June 4th at 3:50 p.m. officers responded to a call at a business located at 6307 Center Street, to check the well-being of a male who was licking windows. The officers located Mr. Bear-heels and learned he recently arrived in Omaha. He was described as talking quietly and appeared to be dehydrated. Officers gave him water, and repeatedly offered medical attention and asked if he wanted to be taken to a shelter. Mr. Bear-heels drank the water and became agitated. The officers said he appeared to be under the influence of drugs and mentally ill. The officers had no lawful reason to detain Mr. Bear-heels and he was allowed to leave the area.

Missing Person Report

Sunday, June 4th at 10:28 p.m. Renita Chalepah (chalpaw) called the Omaha Police Department to report her son, Zachary Bear-heels, missing. She said he was traveling from Murdo, South Dakota to Oklahoma City. She reported he was last seen at the bus station on Sunday, June 4th at 1:00 a.m. She told the officer her son has schizophrenia and is bi-polar.

Monday, June 5th at 12:36 a.m., Omaha Police Officers Makyla Mead and Jennifer Strudl were dispatched to the Bucky's gas station at 60th & Center for a call of a disturbance with a party refusing to leave.

12:40 a.m. Officer Strudl arrived at Bucky's first. She observed a male party, later identified as Mr. Bear-heels dancing in front of the store. Officer James Mosby was in the area and stopped to assist. Officer Strudl's cruiser camera was recording and captured various portions of this incident. Audio of the entire incident was recorded. However, the audio is not always clearly heard or discernible.

Officers Strudl and Mosby made contact with Mr. Bear-heels and attempted to obtain his identification, as well as, why he was at the Bucky's. Mr. Bear-

EXHIBIT

tabbles

heels' speech was garbled and he displayed signs of impairment. When asked for identification, he suddenly raised his hands to his head and stepped towards Officer Strudl.

12:41 a.m. Due to his erratic behavior, the officers placed him into handcuffs, without incident.

12:43 a.m. Officer Mead arrived. At this point, the officers were still unable to determine Mr. Bear-heels' name or address.

12:51 a.m. Officer Mosby left this call to go to another location to assist other officers. It was reasonable for him to leave as Mr. Bear-heels was secured in handcuffs and not posing any risk.

12:54 a.m. Officers Mead and Strudl placed Mr. Bear-heels into the back seat of Officer Strudl's cruiser while they determined how to proceed. As they placed him in the cruiser, Officer Strudl told him they would take him to where he wanted to go. The cruiser is equipped with an in-car video camera that recorded the rear passenger area. Mr. Bear-heels would remain in the cruiser for the next 36 minutes, until 1:30 a.m.

The officers located identification for Mr. Bear-heels. A records check revealed that Mr. Bear-heels was reported missing. Officer Strudl consulted with Sergeant Erik Forehead to determine what course of action to take. Based on the information provided, Sergeant Forehead determined there was insufficient justification to detain Mr. Bear-heels or place him in emergency protective custody.

1:03 a.m. Officer Strudl called Ms. Chalepah and during their **23 minute phone conversation** they discussed options for Mr. Bear-heels. At one point, Officer Strudl attempted to have Mr. Bear-heels talk to his mother, but his speech was unintelligible. Ms. Chalepah told her son she was trying to get him home.

She requested that her son be placed in a Crisis Center until she could get to Omaha to pick him up. During this time, Officer Mead called Sergeant Forehead and was told that there was still no justification to hold Mr. Bear-heels. Ultimately, it was agreed that Mr. Bear-heels would be taken to the bus station, as requested by his mother.

1:27 a.m. Officer Scotty Payne arrived. At this point, Officer Strudl told Mr. Bear-heels that she was taking him to the bus station.

1:30 a.m. Officer Strudl opened the cruiser door to put the seat belt on Mr. Bear-heels. He immediately came out of the cruiser. Officer Strudl directed him to stay in the car and to stop. She was unable to prevent him from getting out of the cruiser and he started to walk away from the three officers.

Officers Strudl, Payne, and Mead struggled to maintain control of Mr. Bear-heels (29 yoa, 5'9, 250). They attempted to get him back over to the cruiser, but were unsuccessful. They pinned him up against an outdoor display of bottled water.

1:32 a.m. The officers radioed for backup, but their request was lost in the radio traffic due to a pursuit that just started in the city. While pinned against the water display, they encouraged him to cooperate and get back in the cruiser.

1:35 a.m. Officer Ryan McClarty arrived. The cruiser camera recorded and captured various portions of this incident. Audio of the incident was recorded as well.

The four officers tried to move Mr. Bear-heels to the cruiser and a struggle ensued. Officer McClarty pulled Mr. Bear-heels to the ground and held him down and Officer Payne warned him that he would be tased.

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As each officer held a limb, they attempted to carry him to the cruiser. Immediately upon lifting him off the ground, he broke free and landed on his feet. The officers were unable to control him and disengaged. Bear-heels is in handcuffs behind his back still.

Officer Payne announced loudly, "Taser, Taser". Mr. Bear-heels replied with an expletive to the officers. Officer Payne warned him two more times that he would be tased. The other officers also told him that he needed to go to the car. He was warned him for a third time that he would be tased.

Officer McClarty closed in on Mr. Bear-heels and grabbed him. This was followed by another struggle that resulted in Mr. Bear-heels breaking away from the officers.

1:38 a.m. Officer Payne loudly announced "Taser, Taser, Taser" and discharged his electronic control device (ECD) at Mr. Bear-heels. - We refer in policy to the Taser as an electronic controlled device (ECD) the public knows it as a Taser so I will refer to it as a Taser for the remainder of this press conference. - The Taser probes struck him in the abdomen and right thigh. At this time, the Taser did not effectively incapacitate Mr. Bear-heels.

Officer McClarty then pulled Mr. Bear-heels to the ground, grabbed ahold of his ponytail and waist band and began to drag him to the cruiser. Officer Mead grabbed Mr. Bear-heels' right arm and assisted in getting him to the cruiser. Officer McClarty transitioned from holding Mr. Bear-heels by the ponytail to holding him by his left arm.

During this time, the Taser probes were still attached to Mr. Bear-heels and Officer Payne continued to activate the Taser. Mr. Bear-heels was placed on the ground, in a seated position with his back against the rear tire of the cruiser. The right rear passenger door was still open, which allowed the interior cruiser camera to capture video of the aforementioned and following events.

For the next 1 minute and 45 seconds, Mr. Bear-heels sat on the ground with his legs out in front of him and offered no resistance. During this time, Officer Payne activated the Taser three times. The first activation was unprovoked. After the Taser completed the five second cycle, Officer Payne stepped towards Mr. Bear-heels and while standing over him said, "you're gonna get it again." When the next two activations occurred, Mr. Bear-heels did not offer any resistance other than minor movement of his feet and legs which posed absolutely no threat to the officers.

These are egregious violations of the Omaha Police Department's policy, procedures and training on use of force and the use of a Taser.

1:40 a.m. While still seated, Mr. Bear-heels was able to pull his left hand out of the handcuffs and quickly turned towards Officer McClarty. Mr. Bear-heels swung his arms and kicked his legs at Officer McClarty. Officer McClarty responded by delivering fist strikes to his head and attempted a neck restraint. He then top mounted Mr. Bear-heels and delivered multiple fist strikes to his head. While Officer McClarty delivered these strikes, Officer Payne activated his Taser.

At this time, one of the officers radioed for cars to expedite to their location. The officers struggled to get handcuffs back on Mr. Bear-heels.

1:42 a.m. Officer Payne radioed for a command officer and a rescue squad due to the Taser deployment. While the officers waited for assistance, they continued to pin him down to the ground and against the rear wheel of the cruiser. Mr. Bear-heels continued to struggle and can be heard making noises and yelling.

1:45 a.m. Sergeant Forehead arrived on scene and helped secure the handcuffs on Mr. Bear-heels. Several more officers arrived within the next 1-2 minutes. The responding officers took over some of the positions, held by the original officers, to provide relief as Mr. Bear-heels continued to struggle. Flex cuffs were utilized to prevent him from kicking officers.

1:49 a.m. Omaha Fire and Rescue personnel arrived. Mr. Bear-heels was subsequently placed on a gurney and his hands were cuffed to the rails. After he was placed in the rescue squad, Omaha Fire Medics advised officers the Mr. Bear-heels had stopped breathing and did not have a pulse.

2:02 a.m. Omaha Medics transported Mr. Bear-heels to Nebraska Medicine with CPR in progress. Upon arrival at the hospital, Mr. Bear-heels was not breathing and did not have a pulse.

2:16 a.m. Mr. Bear-heels was pronounced deceased.

An autopsy was completed on Tuesday, June 6th. The cause of death is pending further investigation and toxicology results. We do know that blunt force trauma is not the preliminary cause of death.

At this point in the investigation, the Omaha Police Officer-Involved Investigations Team has interviewed 18 Officers, 5 Medics, and 12 citizens. This is still an ongoing investigation. Anyone who may have witnessed any portion of this incident is encouraged to contact Omaha Police at [402-444-5656](tel:402-444-5656)

UPDATE: Wednesday, June 7th 2017

The four officers on scene during the critical portions of the incident were:

Jennifer Strudl, a 3-year, 2 month officer assigned to the Uniform Patrol Bureau, Southwest Precinct.

Makyla Mead, a 4-year, 10 month officer assigned to the Uniform Patrol, Southwest Precinct.

Scotty Payne, a 4-year, 10 month officer assigned to the Uniform Patrol, Southwest Precinct.

Ryan McClarty, a 1 year, 11 month officer assigned to the Uniform Patrol, Southwest Precinct.

Chief Schmaderer will hold a press conference regarding the in custody death investigation of Mr. Bearheels. We will advise as soon as the date and time have been determined.

UPDATE: Tuesday, June 6th 2017

We anticipate concluding the remaining involved officers' initial interviews later this afternoon. Tomorrow morning the investigation and all relevant facts determined thus far will be reviewed by the Douglas County Attorney's Office. Subsequent to the interviews and that meeting, we expect that we will be able to release further information through a more detailed press release tomorrow afternoon and/or a press conference thereafter.

The Police Department has fielded several inquiries on how and when the mother of Mr. Bearheels was notified of this incident.

The Officer-Involved Investigations Team (OII), was assigned to locate, identify and notify the family of Mr. Barheels. Ms. Renita Chalepah (Ramirez), was initially contacted by OPD Sergeant Alan Reyes before 6:00 AM Monday morning. After ascertaining her address and confirming her

relationship with Mr. Zachary Bearheels, she was informed that a local law enforcement officer would come to her residence in person and speak with her about her son. (It is the policy of the Omaha Police Department to make any type of death notification, for any reason, in person with a law enforcement officer, not over the phone). OPD immediately contacted and informed law enforcement in Oklahoma. An in-person notification was then made by BIA Chief Longhat.

Ms. Chalepah (Ramirez), was given OPD contact information by Chief Longhat during the notification. Subsequently she has twice spoken with Sergeant Reyes, to ask questions and exchange information about the incident.

Again, there will be more information disseminated as the investigation progresses. Our thoughts and prayers are with Mr. Bearheels' family as well as the involved officers during this terribly trying time.

In-Custody Death Investigation 6003 Center Street

The Omaha Police Department is currently investigating an in-custody death. On Monday, June 5, 2017 at 12:36 a.m., officers responded to a radio call to the Bucky's at 6003 Center Street regarding a disturbance with a person refusing to leave.

The subject involved in this incident has been identified as Zachary N. Bearheels (d.o.b. 10-29-87), from Murdo, South Dakota. Mr. Bearheels' next of kin have been notified.

Upon arrival at Bucky's, officers took Mr. Bearheels into custody. Mr. Bearheels was displaying erratic behavior and officers also learned that he had been reported missing by his relatives. At 1:32 a.m. officers on scene requested assistance from additional officers. At 1:42 a.m., officers requested a rescue squad after a Taser deployment. Mr. Bearheels was transported by Omaha Fire Medics to the Nebraska Medical Center with CPR in progress. Mr. Bearheels was pronounced deceased upon arrival at the hospital.

The investigation is in the early stages. Four officers were involved in the arrest of Mr. Bearheels. One officer has been interviewed; however, the three other officers will be interviewed on Tuesday late in the afternoon.

Per Omaha Police Department policy, officers involved in an in-custody death investigation may be placed on paid administrative leave pending the Officer-Involved Investigations Team and Internal Affairs investigations. All four officers involved in this incident have been placed on administrative leave.

Per state law, a Grand Jury will be convened to investigate the actions of the officers. Any additional information about this incident will be released by the Omaha Police Department Public Information Office.